

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

BARTOLO INFANTE,

Plaintiff,

v.

ROGER WILSON, ET AL.;

Defendants.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 5:17-CV-00087-RWS

ORDER

Plaintiff Bartolo Infante, a former inmate of the Texas Department of Criminal Justice, Correctional Institution now deceased, sued Defendants for constitutional violations under 42 U.S.C. § 1983. This Court referred the case to a Magistrate Judge, who recommends dismissal under Rule 25(a). For the following reasons, that recommendation is **ADOPTED**, and the case is **DISMISSED WITHOUT PREJUDICE**.

Rule 25(a) provides that if a motion for substitution of parties is not made within 90 days after service of a statement noting the death, the action by or against the decedent shall be dismissed. *See also Broderick-Home v. United States*, 544 F.App'x 479 (5th Cir. 2013)

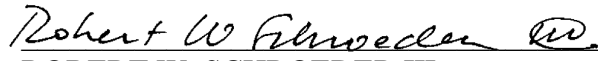
Plaintiff passed away on April 7, 2020. On April 14, 2020, the Magistrate Judge issued a Report noting Plaintiff's death and recommending that all pending motions be denied, subject to re-urging in the event a motion for substitution is filed and granted. Because there was no suggestion of death in the record, the Magistrate Judge stated that the Report would serve as the statutory statement noting Plaintiff's death and commencing the statutory 90-day period. This period has now elapsed and no motion for substitution has been made. It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 16) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** based upon the death of the Plaintiff Bartolo Infante and the absence of a motion for substitution in accordance with FED. R. CIV. P. 25(a). Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 11th day of August, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE